

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

MARY and RICHARD HOULE,  
Plaintiffs

v.

THE STANDARD FIRE INSURANCE  
COMPANY and FEDERAL EMERGENCY,  
MANAGEMENT AGENCY,  
Defendants

)  
)  
)  
) Docket No. 2:13-cv-44  
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STIPULATED JOINT MOTION TO BE EXCUSED  
FROM THE EARLY NEUTRAL EVALUATION PROCESS

Pursuant to Local Rule 16.1(b)(1), the parties jointly move to be excused from the Early Neutral Evaluation process. In support thereof, the parties state:

1. The parties agree that there is good cause to excuse the parties from participating in the Early Neutral Evaluation process.

2. Standard Fire is a fiscal agent of the United States and is subject to the National Flood Insurance Program (“NFIP”) requirements imposed by federal statute and by the Federal Emergency Management Agency (“FEMA”). FEMA has reserved to *itself* the exclusive authority to waive NFIP requirements (*see* 44 C.F.R. Pt. 61.13(d), and Pt. 62.23(k), as well as 44 C.F.R. Pt. 61, App. A(1), Art. VII(D)) and, therefore, Standard Fire does not have any settlement authority. *See e.g., Jacobson v. Metropolitan Property & Cas. Ins. Co.*, 672 F.3d 171, 174-75 (2d Cir. 2012). As *Jacobson* explains:

Pursuant to its authority under 42 U.S.C. § 4081(a), FEMA created the WYO Program, which allows private insurers, also known as “WYO companies,” to issue and administer flood-risk policies under the NFIP. . . . WYO companies such as Metropolitan [and Standard Fire] may act as “fiscal agents of the United States,” 42 U.S.C. § 4071(a)(1), but they are not general agents and therefore must strictly enforce the provisions set out in the regulations, *varying the terms of a policy only with FEMA's express written consent*. See 44 C.F.R. §§ 61.4(b), 61.13(d)(e), 62.23(c)–(d). Thus, while the private insurance companies administer the federal program, it is the Government, not the companies, that pays the claims.

672 F.3d at 174-75 (emphasis added) (several internal citations and quotations omitted). As such, Standard Fire cannot make payment on Plaintiffs’ claim absent express written consent from FEMA.

3. Because Standard Fire has no settlement authority, the parties agree that the use of the Early Neutral Evaluation process will not assist the parties in resolving the current litigation.

WHEREFORE, the parties respectfully request that they be excused from participating in the Early Neutral Evaluation process.

Dated: Burlington, Vermont  
August 16, 2013

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For Defendant, The Standard Fire  
Insurance Company

APPROVED AND SO ORDERED:

Date: \_\_\_\_\_, 2013

\_\_\_\_\_  
Hon. William K. Sessions, III  
U.S. District Court Judge